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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,682	07/01/2003	Gloria Falla	H47969 1671.1	5335
26158	7590	06/30/2009		
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC			EXAMINER	
ATTN: PATENT DOCKETING			HALE, GLORIA M	
P.O. BOX 7037			ART UNIT	PAPER NUMBER
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		06/30/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/611,682	Applicant(s) FALLA ET AL.
	Examiner Gloria Hale	Art Unit 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Board Decision of 3-13-09.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/DS/02)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

In view of the decision by the Board of Patent Appeals and Interferences rendered on March 13, 2009 PROSECUTION IS HEREBY REOPENED. New grounds of rejection are presented below.

To avoid abandonment of the application, appellant must exercise one of the following options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this action is final); or,
- (2) initiate a new appeal by filing a Notice of Appeal under 37 CFR 41.31 followed by an Appeal Brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Director has approved of reopening prosecution by signing below.
/KAREN M. YOUNG/
Director, Technology Center 3700

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9, 10,14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) in view of Winik et al (US 6,402,586) and Jahnig (US 4,185,332).

In regard to claims 1-7, 9, 10, 14 and 16-18 Gluckin discloses a method of forming an undergarment comprising inserting/applying an adhesive layer 80 between a first fabric layer 78 and a second fabric layer 92 to form a fabric sub-assembly (See Gluckin, col. 3,lines 44-51; figures 3 and 5-11). The method causes said adhesive layer to form a laminate by bonding (with heat sealers 94,96) and with the first and second fabric layers bonded together in the claimed areas to form a stretchable laminate. The stretchable laminate having a periphery that is larger than an entire outer periphery of the undergarment. The outer periphery of the undergarment is formed by removing a trim by cutting along the entire outer periphery to form a finished scalloped edge 109, of the undergarment that resists unraveling. Gluckin discloses the fabrics as including stretch cotton based materials and polyester. The film of Gluckin maintains its stretchability as claimed. (See Gluckin, Abstract).

However, Gluckin does not specifically disclose the cotton based fabric materials or that the single breast cup undergarment portion formed from the subassembly is "An entire outer periphery of the undergarment".

Winik et al discloses constructing a breast cup of cotton, spandex and polyester blends to provide a soft material to form the undergarment breast cups. (See Winik et al, col. 1, lines 58-61 and col. 2,lines 49-53). Winik et al discloses

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the cotton, spandex and polyester blend material as claimed. However, Winik et al does not disclose the specific percentages of the blended materials to achieve the desired aesthetic effect, stretch, softness and moisture wicking benefits in the optimum balance. It is well known in garment manufacturing to select the known materials to achieve the desired benefits and to do so by routine experimentation.

Finding the optimum percentage of fiber contents of each fiber within the material would have been an obvious modification since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617, 2nd 272, 205 USPQ 215 (CCPA 1980)

The single breast cup portion of Gluckin, as seen in figure 15, forms a single cup brassiere and is wearable on a one breasted wearer who has undergone a mastectomy. Such single breast cup brassieres are well known and clearly seen in Jahnig (Figure 1). Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed a single breast cup brassiere as seen in Jahnig for a single breasted woman by the method steps disclosed by Gluckin wherein the subassembly is formed by inserting an adhesive layer within. The subassembly formed having a periphery that is larger than "An entire outer periphery of the undergarment and in this case a single breast cup brassiere that is well known and as seen in Jahnig.

The Gluckin blank or sub assembly has a periphery that is larger than "an outer periphery of the undergarment" in that the upper edge of the subassembly, as seen in figure 9, is larger than the edge 109 of the

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undergarment (as seen in Gluckin, figure 15). The entire edge about the bra half is "an entire outer periphery that is of a lesser size than the blank. The single breast cup is then used as a single cup bra as seen in Jahnig. The finished edge is heat fused and resists raveling.

Claims 8, 15 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) in view of Winik et al (US 6,402,586) and Jahnig (US 4,185,332) as applied to claim 1 above, and further in view of Bracht (US 2, 915,067).

Gluckin, Winik et al and Jahnig disclose the invention substantially as claimed including the scalloped edge. However, Gluckin, Winik et al and Jahnig do not disclose the adhesive fusible material as being a polyethylene and ethylene acetate copolymer or the specific content percentages of polyester, cotton and spandex. Bracht discloses a fusible support material formed of polyethylene material. (See Bracht, col. 2,lines 28-37).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassier of Gluckin with the teaching of Bracht to include a fusible support layer therein to provide the support to the breast of the wearer. In regard to claims 20-23, Gluckin, Winik et al and Jahnig et al disclose the non-bonded cup area, cotton, polyester and spandex blended material layers and the scalloped edge as discussed above and as claimed in claim 1.

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Claims 10 and 11 are rejected under 35 USC 103(a) as being unpatentable over Gluckin in view of Winik et al and Jahnig et al as applied to claim 1 above and further in view of Burr (US 5,820,443).

Gluckin discloses the invention substantially as claimed including a laminated brassiere structured substantially as claimed. However, Gluckin does not specifically disclose the gore reinforcement fabric 15 located as claimed in order to provide support at the central area of the bra. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to include a central gore fabric reinforcement as disclosed by Burr in order to provide extra support at the central area of the brassiere. (See Burr, col. 2,lines 25-35; col. 4,lines 10-19 and col. 4,line 66 – col. 5,line 39).

Claims 12 and 13 are rejected under 35 USC 103(a) as being unpatentable over Gluckin in view of Winik et al, Jahnig et al and Burr (5,820443) as in claim 10 above and further in view of Falla (US 6,837,771).

Gluckin, Winik et al, Jahnig and Burr disclose the brassiere structure substantially as claimed except for the under wire nod under wire channel in the brassiere cup as claimed.

Falla discloses a well known brassiere underwire 55 in an under wire channel 50 in a brassiere for added support to the breasts. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere to include the underwire and underwire channel to provide more support to the wearer's breasts as desired. The addition

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of such underwire and underwire channels are well known in brassiere construction as seen in Falla, figures 3,4 and 7A.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/
Primary Examiner, Art Unit 3765

